No. 92-1095

In the Supreme Court of the United States

OCTOBER TERM, 1992

CLAYTON J. LONETREE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF MILITARY APPEALS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether petitioner's statements to American intelligence officers regarding his contacts with Soviet KGB agents and his disclosure of classified information were admissible.

2. Whether the Sixth Amendment Confrontation Clause requires the government to disclose the identity of an intelligence agent who testifies for the government simply in order to corroborate the defendant's confession.

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OPINIONS BELOW

The opinion of the Court of Military Appeals, Pet. App. 1a-40a, is reported at 35 M.J. 396. The opinion of the Navy-Marine Corps Court of Military Review, Pet. App. 42a-110a, is reported at 31 M.J. 849.

JURISDICTION

The judgment of the Court of Military Appeals was entered on September 28, 1992. The petition for a writ of certiorari was filed on December 28, 1992 (a Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1259(3).

STATEMENT

At a general court-martial, petitioner was convicted of conspiracy to commit espionage, disobeying general orders, espionage, and the disclosure of protected intelligence identities, in violation of Articles 81, 92, 106a, and 134 of the Uniform Code of Military Justice (UCMJ), 10 U.S.C. 881, 892, 906a, and 934.[1] Petitioner was sentenced to 30 years' imprisonment, a dishonorable discharge, a $5,000 fine, forfeiture of all pay and allowances, and a reduction in rank. The convening authority reduced the term of confinement to 25 years in return for petitioner's post-trial cooperation in submitting to a polygraph examination that was designed to assess the extent of the damage to national security, and disapproved the fine; otherwise, the convening authority approved petitioner's sentence. On appeal, the Navy-Marine Corps Court of Military Review set aside the four specifications alleging that petitioner had violated Department of the Navy regulations and one specification alleging wrongful communication of national defense information; the court also consolidated the five specifications of conspiracy into one. Otherwise, the court affirmed petitioner's convictions and sentence. The Court of Military Appeals affirmed

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[1] The espionage charges were filed under both Article 106a of the UCMJ, 10 U.S.C. 906a, and 18 U.S.C. 793(d), which is incorporated into Article 134 of the UCMJ, 10 U.S.C. 934, as a "crime and offense not capital." Two specifications alleging the wrongful disclosure of covert identities, prohibited under the Intelligence Identities Protection Act of 1982, 50 U.S.C. 421, were also charged under Article 134.

petitioner's convictions but remanded the case for possible reconsideration of his sentence.

1. This case stemmed from petitioner's romantic involvement with a Russian national employed by the American Embassy in Moscow as an interpreter while petitioner was stationed there as a Marine Corps security guard. That involvement, coupled with petitioner's fascination from early youth with totalitarian causes, led to his progressive entanglement with a Soviet intelligence operative in Moscow, one Yefimov or "Uncle Sasha." Petitioner continued his contacts with Soviet intelligence after his transfer to the Marine Guard detachment at the American Embassy in Austria. While in Austria, petitioner was introduced to a Soviet intelligence operative in Vienna, one Lyssov or "George." During his Moscow and Vienna assignments, petitioner transferred to the Soviets classified materials that included information about the physical arrangements within the embassies, security measures, and the identification of American embassy officers with duties of interest to the Soviets. Pet. App. 2a, 44a; Gov't Reply to Assignment of Errors 2-3 [hereinafter Gov't Reply]. Petitioner ultimately reported his contacts with the Soviets when "the pressure to provide more information and report to Moscow for further training reduced his options." Pet. App. 98a.

2. The questions presented in the petition stem from two issues that arose at trial.

a. Petitioner disclosed his contacts with Soviet intelligence agents to an American intelligence agent who came to be known at trial as "Big John." Petitioner made the disclosure to Big John at an

embassy Christmas party in Vienna on December 14, 1986. That revelation immediately led to a series of further interviews or debriefings with an associate of Big John who was referred to as "Little John."[2] After petitioner met Little John at a McDonald's restaurant in Vienna, Little John arranged for five interview sessions at a Vienna hotel suite rented for that purpose, the last of which occurred on the evening of December 24. That evening Little John introduced petitioner to agents of the Naval Investigative Service (NIS) who had come to Vienna to escort petitioner to London for questioning. Gov't Reply 1-2.[3] Before being questioned by the NIS agents in London, petitioner was given the warnings required by Article 31 of the UCMJ, 10 U.S.C. 831. Pet. App. 75a-76a. Petitioner ultimately gave the NIS agents three extensive signed confessions, two of which were introduced against petitioner over his objection at trial. Big John and Little John also testified over petitioner's objection about the statements he made to them during the Vienna debriefings, which had not been preceded by Article 31 warnings or *Miranda* warnings. Pet. App. 73a-74a; Gov't Reply 40.

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[2] The identities of Big John and Little John were disclosed to the defense. The pseudonyms were used in the trial record to protect classified information. Pet. App. 74a n.16.

[3] The results of each Vienna interview were memorialized in cables sent from the embassy in Vienna to the Johns' superiors in Langley, Virginia. Copies of those cables were made available to the NIS agents upon their arrival in Vienna, and the agents used them to guide their interrogation of petitioner. Pet. App. 75a.

b. At trial, in order to corroborate petitioner's confessions, the government offered a witness who testified under the pseudonym "John Doe." During his debriefing by Big John and Little John, petitioner said that he was scheduled to meet KGB agent Lyssov at a particular location two weeks later, on December 27. John Doe testified that Lyssov in fact appeared at the location in question, as petitioner had foretold. Gov't Reply 17-18. Before trial, the government moved to prevent disclosure to the defense of John Doe's identity and to preclude cross-examination as to that issue, on the ground that those intelligence matters should remain secret. The trial judge granted the government's motion and barred the defense from cross-examining John Doe about his identity. Pet. App. 15a, 51a-53a.

3. The court of military review affirmed. Pet. App. 42a-110a. The court rejected petitioner's claims that his statements in Vienna to Big John and Little John should have been suppressed because he was not first given the warnings required by Article 31 of the UCMJ or *Miranda*. Pet. App. 73a-84a. Article 31 did not apply, the court ruled, because the Johns were not members of the armed forces; they did not question petitioner as part of a unified military/civilian law enforcement investigation; and they were not acting as agents of the military. Pet. App. 77a-81a. The court also held that petitioner's statements to the Johns were not obtained in violation of *Miranda*, because petitioner was not "in custody" for *Miranda* purposes at the time of the Vienna interviews. *Id.* at 81a-84a.

The court also rejected petitioner's claim that denying him the opportunity to learn John Doe's identity violated the Confrontation Clause. Pet. App. 51a-67a. The court found that nothing in the record showed that John Doe's identity would have materially aided petitioner's defense. *Id.* at 64a-66a. Moreover, the court held that in all other respects petitioner had an opportunity "to place John Doe in the setting in which he observed the Soviet KGB officer," *id.* at 66a--which is why the defendant is ordinarily entitled to learn a witness's identity, see *id.* at 56a-57a. And lastly, the court concluded that even if the refusal to disclose John Doe's identity violated the Confrontation Clause, any violation would have been harmless beyond a reasonable doubt, because petitioner's confessions to Big John and Little John were corroborated in various respects. *Id.* at 66a n.14 (citing *Delaware* v. *Van Arsdall*, 475 U.S. 673 (1986)).

4. The Court of Military Appeals affirmed. Pet. App. 1a-40a. By a divided vote, the court rejected petitioner's claim that his statements to Big John and Little John should have been suppressed because they were induced by promises of confidentiality that were subsequently broken. *Id.* at 4a-10a. Relying on *Colorado* v. *Connelly*, 479 U.S. 157 (1986), the court ruled that for an inducement to be unlawful under Article 31(d), UCMJ, 10 U.S.C. 831(d), and to render a resulting confession involuntary, "the inducement must be made by someone acting in a law enforcement capacity or in a position superior to the person making the confession." Pet. App. 9a. Petitioner could not satisfy that requirement, the court held,

since there was no record evidence supporting that conclusion. *Id.* at 10a. The court therefore held that petitioner's statements to Big John and Little John were properly admitted.[4]

The court unanimously rejected petitioner's argument that the trial court's refusal to reveal John Doe's identity violated the Confrontation Clause. Pet. App. 15a-28a. A defendant generally has a right on cross-examination to learn the identity of a witness who testified against him in order to "place [the witness] in his proper setting," the court reasoned, *id.* at 26a (quoting *Alford* v. *United States*, 282 U.S. 687, 692 (1931)), but that right is not absolute, Pet. App. 16a-25a. The government has a legitimate, countervailing interest in protecting classified information. *Id.* at 17a-24a. The court recognized that it sometimes may be difficult to balance the government's interest in confidentiality against the defendant's interest in disclosure, *id.* at 24a-25a, but found

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[4] Senior Judge Everett concluded that, due to the broken promise of confidentiality, petitioner's statements to Big John and Little John were inadmissible. Pet. App. 35a-38a. At the same time, he believed that petitioner's later statements to the agents of the Naval Investigative Service (NIS) might be admissible under *Oregon* v. *Elstad*, 470 U.S. 298 (1985). He declined to undertake the analysis required by that case, however, in light of the majority's ruling. Pet. App. 38a. Judge Gierke also believed that petitioner's statements to Big John and Little John were inadmissible. *Id.* at 38a-39a. He concluded, however, that petitioner's statements to the NIS agents were admissible and that the error in the admission of petitioner's statements to Big John and Little John was harmless beyond a reasonable doubt under *Arizona* v. *Fulminante*, 111 S. Ct. 1246 (1991). Pet. App. 39a.

that "this is all theoretical" in this case, because the sought-after information was not necessary to petitioner's defense, *id.* at 26a. After examining the evidence in camera, the court determined that it "was not essential to a fair resolution of the cause and that such marginal materiality as it did possess did not outweigh the interests of the United States and the witness in limiting its disclosure." *Ibid.* Finally, the court held that any error in this regard was harmless beyond a reasonable doubt because of the overwhelming proof of petitioner's guilt. *Id.* at 26a-28a; see also *id.* at 33a (noting the "overwhelming evidence of [petitioner's] guilt").

ARGUMENT

1. During his testimony, Little John volunteered that at some point in his five debriefing sessions with petitioner he assured petitioner that their conversations would be held "in confidence." Little John said that he made that statement in order to establish a relationship of trust and rapport with petitioner. The NIS agents who later questioned petitioner were advised of petitioner's statements, and both Big John and Little John testified against petitioner at his trial. Petitioner maintains that the trial judge erred by admitting his confessions to Big John and Little John, as well as his subsequent written confessions to NIS agents. Petitioner claims that since the Johns told him that his statements would be held in confidence, turning over his Vienna debriefing statements to the NIS rendered those statements involuntary and required that both those statements and petitioner's London statements be excluded from evidence at trial. Pet. 7-10.

As the text of the Fifth Amendment Self-Incrimination Clause indicates, "a necessary element of compulsory self-incrimination is some kind of compulsion." *Hoffa* v. *United States*, 385 U.S. 293, 304 (1966). Accord *United States* v. *Washington*, 431 U.S. 181, 187 (1977) ("Absent some officially coerced self-accusation, the Fifth Amendment privilege is not violated by even the most damning admissions."). The record in this case reflects no coercive conduct by the intelligence agents who interviewed petitioner. He was not threatened, physically pressured, or otherwise exposed to improper forms of official compulsion in an effort to force him to incriminate himself.

Petitioner argues that his statements to Big John and Little John should be deemed involuntary because the statements were made in response to a promise that anything he said would remain confidential. A promise of confidentiality, however, is not the kind of government conduct that is likely to overbear a person's will and in effect "render his confession the product of coercion." *Arizona* v. *Fulminante*, 111 S. Ct. 1246, 1253 (1991). This Court in *Bram* v. *United States*, 168 U.S. 532, 542-543 (1897), stated that a confession is involuntary if it is obtained by " 'any direct or implied promises, however slight.' " In *Fulminante*, however, the Court made clear that under current precedent, that passage from *Bram* "does not state the standard for determining the voluntariness of a confession." 111 S. Ct. at 1251.[5] In

[5] Even before this Court's decision *Arizona* v. *Fulminante*, 111 S. Ct. at 1251, the courts of appeals repeatedly held that a promise of leniency in charging or sentencing made to a suspect to encourage his cooperation does not render involun-

order to render a confession involuntary, an inducement must be so attractive as to overcome the suspect's will and effectively compel him to speak. A promise of confidentiality made in the course of an intelligence agent's "damage assessment" interview to a person who voluntarily approached the agents for the purpose of informing them about his contacts with foreign intelligence agents cannot be said to be such an overwhelming inducement that it must have overcome petitioner's will.

Although petitioner argues that the breach of the promise of confidentiality rendered his confession involuntary, the analysis of the voluntariness of a confession cannot turn on whether the government fails to abide by a promise made at the time of the confession. If the promise did not render petitioner's statements involuntary when they were made, the subsequent violation of the promise could not retroactively turn voluntary statements into involuntary ones. Therefore, petitioner's involuntariness claim turns on whether the promise of confidentiality, standing alone, was so coercive as to overcome petitioner's will and compel him to confess. Because a promise of confidentiality by itself cannot reasonably be said to have such an effect, petitioner's Vienna statements were not involuntary.

The question of the admissibility of petitioner's Vienna statements is more properly viewed as

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tary statements subsequently made by the suspect. See, *e.g.*, *Tippit* v. *Lockhart*, 859 F.2d 595, 596-598 (8th Cir. 1988), cert. denied, 490 U.S. 1100 (1989); *United States* v. *Baldacchino*, 762 F.2d 170, 179 (1st Cir. 1985); *United States* v. *Ferrara*, 377 F.2d 16 (2d Cir.), cert. denied, 389 U.S. 908 (1967).

turning on whether the government should be held to its promise as a matter of due process, which is not a question of voluntariness. In this case, the court of appeals properly held that representations made by the two intelligence agents during their damage control interviews should not have the effect of making petitioner's statements to them and his later statements to criminal investigative agents inadmissible at his court-martial.

As the court of appeals noted, the two intelligence agents were not acting for the military, nor were they part of the investigative team seeking to determine whether petitioner had violated any laws. Their mission was a more limited, and more urgent, one—to find out as quickly as possible whether petitioner's actions had compromised sensitive American intelligence interests, including the safety of American intelligence agents overseas.

The intelligence agents made their promise of confidentiality in order to obtain critical damage assessment information, not to obtain evidence for a criminal prosecution. It would carry the "contract" principle of due process too far to hold that the promise of confidentiality made by the intelligence agents should extend to the very different context of a criminal trial and render their testimony about petitioner's statements inadmissible.[6] Obviously, if

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[6] By analogy, if a fireman asked a suspected arsonist at the scene of a fire where the victims might be located, the arsonist's response would not be excluded from a subsequent criminal trial simply because the fireman may have promised confidentiality to the arsonist in the course of eliciting the information. The fireman would not be speaking as a represen-

the two agents had not been government employees, their promises of confidentiality would not have been "binding" in the sense that they would have barred the use of petitioner's admissions at trial. Even if they had been government employees other than investigators or supervisors, such as fellow soldiers to whom petitioner had made admissions on condition of confidentiality, any promise of confidentiality made by the listeners would not bar the admission of petitioner's statements at trial. And, of course, if the agents had been undercover officers seeking to obtain admissions from petitioner, their agreement to remain silent in any possible investigation would not be binding on them or on the government.

The same principles are applicable here. The fact that the two intelligence agents were government employees does not mean that their promise of confidentiality must be enforced by excluding petitioner's statements at his criminal trial. See *United States* v. *Eide*, 875 F.2d 1429, 1431-1432, 1434 (9th Cir. 1989) (assurance of confidentiality given by supervisor at a Veterans Administration hospital did not render the suspect's statements inadmissible in a criminal trial). The intelligence agents were not part of the investigative or prosecutive team; they were

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tative of the criminal investigative or prosecutive team, and his promise, given in order to obtain information essential to address a public emergency, should not be used to grant the defendant a form of immunity from the use of highly probative evidence against him at trial. Cf. *New York* v. *Quarles*, 467 U.S. 649 (1984). The same principle applies here and undermines any claim that the prosecution should be bound by Little John's promises of confidentiality.

not acting in aid of the prosecution; and they did not make the offer of confidentiality at the direction or with the acquiescence of the investigative or prosecution agents.[7]

What is more, the promise of confidentiality was not made an express condition of petitioner's cooperation with the intelligence agents. On the contrary, petitioner initiated the discussions with the intelligence agents, and the promise of confidentiality was not made until well after the discussions between petitioner and the intelligence agents had gotten under way. Thus, the assurance of confidentiality was not the cause for petitioner's decision to speak with the agents in Vienna.

Finally, it is not clear that the promise of confidentiality was meant to extend to possible criminal proceedings. During petitioner's debriefing in Vienna, Little John explained that he was not conducting a law enforcement investigation. He told petitioner that he would not decide petitioner's fate; that other authorities were responsible for that decision; and that it was in petitioner's own interest to cooperate with Little John, because the officials who would decide petitioner's fate would consider whether he had aided Little John's inquiry. Tr. 336-

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[7] As the Court of Military Appeals explained, Pet. App. 10a:

> The record below demonstrates that the Johns displayed none of the indicia of law enforcement actors: They did not engage in custodial or coercive discussions with Lonetree; they made clear that they did not represent the command or law enforcement entities; and they did not attempt to restrict Lonetree's movements or suggest they possessed the authority to do so.

337, 414. In that regard, Little John implied that statements that petitioner made aiding Little John's inquiry would be brought to the attention of law enforcement officials, because that is the most direct manner by which petitioner's aid could be made known. Little John's assurances of confidentiality therefore were not the only relevant statements made to petitioner. When those statements are are viewed in context, they should not be seen as being tantamount to a plea bargain or an offer of use immunity. Under these circumstances, due process does not require that the prosecution be held to an assurance of confidentiality made along the way by persons acting for purposes having nothing to do with advancing the cause of the prosecution ultimately brought against petitioner.

2. Petitioner contends that he was denied the opportunity to confront John Doe when the trial judge refused to order the government to disclose John Doe's identity. Pet. 10-15. The courts below, however, correctly rejected that contention. They correctly held that withholding the identity of John Doe was necessary to protect legitimate national security interests and that, in any event, any error in this regard was harmless.

a. Petitioner relies heavily on *Alford* v. *United States*, 282 U.S. 687 (1931), and *Smith* v. *Illinois*, 390 U.S. 129 (1968), but those cases are inapposite. *Alford* reversed a conviction on the ground that the defendant was denied the opportunity to reveal that a government witness was being detained in prison at the time of trial and thus may have been eager to "cooperate" in order to have his own charges dropped

or reduced. 282 U.S. at 693-694. *Smith* reversed a conviction because the defendant was prevented from eliciting the name and address of a witness who testified under a pseudonym, who was the only witness to a hand-to-hand drug transaction, and who was likely an informant for the police. 390 U.S. at 130-131. In both cases, the Court held that the defense needed to know the identity of the witness in order to "place the witness in his proper setting," *Alford*, 282 U.S. at 692, and thereby challenge his credibility. See *id.* at 693-694; *Smith*, 390 U.S. at 131-133.

Neither *Alford* nor *Smith* held that a witness's identity can never be kept secret, regardless of the government's countervailing interest in confidentiality.[8] The government will often have a strong, legitimate interest in keeping secret facts that the defense wishes to elicit on cross-examination, and it is well settled that the strength of the government's countervailing interest must be considered before disclosure can be ordered.[9] In this regard, it is firmly settled that if the disclosure of a witnesses's address

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[8] *McGrath* v. *Vinzant*, 528 F.2d 681, 684 (1st Cir.) ("the 'rule' [of *Alford* and *Smith*] is not, like a rule of plane geometry, absolute"), cert. dismissed, 426 U.S. 902 (1976); see *Delaware* v. *Van Arsdall*, 475 U.S. 673, 679 (1986) ("trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about * * * the witness' safety").

[9] See, *e.g.*, *Roviaro* v. *United States*, 353 U.S. 53, 58-62 (1957) (informant's identity); *United States* v. *Harley*, 682 F.2d 1018, 1020 (D.C. Cir. 1982) (surveillance location) and *United States* v. *Green*, 670 F.2d 1148, 1155-1156 (D.C. Cir. 1981) (surveillance location).

would put him in jeopardy, a trial judge can refuse to allow the information to be disclosed.[10] Moreover, in light of this Court's oft-stated recognition that the government has a compelling interest in safeguarding classified information to protect the national security,[11] the courts of appeals have ruled that district courts must consider the government's interest in secrecy when a defendant seeks to discover information covered by the Classified Information Procedures Act, 18 U.S.C. App. 1-16.[12]

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[10] See, *e.g.*, *Smith* v. *Illinois*, 390 U.S. at 133-134 (White, J., concurring); *United States* v. *Varella*, 692 F.2d 1352, 1355-1356 (11th Cir. 1982), cert. denied, 463 U.S. 1210 (1983); *United States* v. *Pepe*, 747 F.2d 632, 654-655 (11th Cir. 1984); *Ahlswede* v. *Wolff*, 720 F.2d 1108, 1110 (9th Cir. 1983), cert. denied, 469 U.S. 873 (1984); *United States* v. *Contreras*, 602 F.2d 1237, 1239-1240 (5th Cir.), cert. denied, 444 U.S. 971 (1979); *United States* v. *Cavallaro*, 553 F.2d 300, 304-305 (2d Cir. 1977); *United States* v. *Rangel*, 534 F.2d 147, 148 (9th Cir.), cert. denied, 429 U.S. 854 (1976); *McGrath* v. *Vinzant*, 528 F.2d at 683-684; *United States* v. *Alston*, 460 F.2d 48, 153-154 (5th Cir.), cert. denied, 409 U.S. 871 (1972).

[11] See *Snepp* v. *United States*, 444 U.S. 507, 509 n.3 (1980): "The Government has a compelling interest in protecting both the secrecy of information important to our national security and the appearance of confidentiality so essential to the effective operation of our foreign intelligence service." See also, *e.g.*, *CIA* v. *Sims*, 471 U.S. 159, 175 (1985); *Haig* v. *Agee*, 453 U.S. 280, 307 (1981); *United States* v. *Reynolds*, 345 U.S. 1, 6-7, 10 (1953).

[12] See *United States* v. *Yunis*, 867 F.2d 617 (D.C. Cir. 1989); *United States* v. *Sarkissian*, 841 F.2d 959, 965-966 (9th Cir. 1988); *United States* v. *Smith*, 780 F.2d 1102, 1107-1108 (4th Cir. 1985) (en banc); *United States* v. *Pringle*, 751 F.2d 419, 427-428 (1st Cir. 1984).

The courts below correctly applied those principles in this case. John Doe's identity was protected from disclosure by the Intelligence Identities Protection Act of 1982, 50 U.S.C. 421. In light of the nature of John Doe's work (such as participating in a surveillance in order to confirm the identity of a KGB agent who was to rendezvous with petitioner in Vienna), the government had a strong interest in safeguarding the secrecy of his identity. By contrast, petitioner had little, if any, need to know John Doe's true name. As the Court of Military Appeals explained, "the evidence of John Doe was at most cumulative," Pet. App. 25a, and petitioner "needed nothing more than he had in order to place John Doe 'in his proper setting' and to 'identif[y] the witness with his environment,' " *id.* at 26a (quoting *Alford* v. *United States*, 282 U.S. at 692, 693). "[T]he real world setting and environment of John Doe at the time of this trial and of all events about which he testified is better reflected in his pseudonym and in his identification as an intelligence agent than in anything connected with his 'true identity.' " Pet. App. 26a. Under these circumstances, the trial court did not err by withholding John Doe's identity.

b. In any event, the military appellate courts held that any error in this regard was harmless beyond a reasonable doubt, Pet. App. 26a-27a, 66a n.14, and that fact-bound conclusion does not warrant review by this Court. "The primary task of this Court upon review of a harmless-error determination by the court of appeals is to ensure that the court undertook a thorough inquiry and made clear the basis of its decision." *Francis* v. *Franklin*, 471 U.S. 307, 326 n.10

(1985). Violations of the Confrontation Clause are subject to harmless error analysis, see, *e.g.*, *Coy* v. *Iowa*, 487 U.S. 1012, 1021 (1988); *Delaware* v. *Van Arsdall*, 475 U.S. 673 (1986), as the courts below recognized, Pet. App. 27a, 68a n.14. Applying that rule, the courts below concluded that any error in this case was harmless because John Doe's testimony only served to corroborate petitioner's confessions, which themselves proved petitioner's guilt, and there was ample evidence aside from John Doe's testimony to serve that purpose. *Id.* at 26a-27a, 66a n.14. Petitioner's claim warrants no further review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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